

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

KYLE FINNELL,

Petitioner, : Case No. 1:17-cv-268

- vs -

District Judge Douglas R. Cole
Magistrate Judge Michael R. Merz

TIM SCHWEITZER, Warden,
Lebanon Correctional Institution,

:

Respondent.

DECISION AND ORDER DENYING PETITION

This habeas corpus case, brought *pro se* by Petitioner Kyle Finnell, is before the Court on Petitioner's Petition to Answer a Federal Quest [sic] at Law Pursuant to 28 U.S.C. § 1331 (ECF No. 153). The Petition asks this Court to answer two questions of federal law: (1) whether ineffective assistance of trial counsel constitutes a structural error such that no showing of prejudice is necessary to prevail on an ineffective assistance of trial counsel claim and (2) whether the questioning of jurors is *per se* prejudicial.

28 U.S.C. § 1331 gives the United States District Courts original subject matter jurisdiction over cases which make claims that arise under federal law. The statute does not authorize federal courts to answers questions posed by habeas corpus litigants except in the course of deciding those cases. When and if the questions Petitioner poses become material to a final decision in this case, the Court will answer them. But before that providing answers would be in the nature of providing an advisory opinion which we may not do. *Golden v. Zwickler*, 394 U.S. 103, 108 (1969), quoting *Utd. Pub. Workers of Am. (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947) (parentheses in original)

(internal quotation marks omitted). “Article III of the U.S. Constitution empowers federal courts to hear ‘Cases’ or ‘Controversies,’ nothing more. And ‘no justiciable “controversy”’ exists when parties ... ask for an advisory opinion.” *United States v. Asakevich*, 810 F.3d 418, 420 (6th Cir. 2016).

The Petition is DENIED.

September 5, 2023.

s/ *Michael R. Merz*
United States Magistrate Judge